

REMARKS

In reply to the Office Action mailed January 9, 2007, claims 1, 4, 10, and 14 were amended and claim 11 was cancelled. Claims 1-7, 10, and 14 are pending and under examination. Please consider the following remarks.

Claims 1-7, 9-11, and 14 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The Examiner asserts that the term heteroaryl is not defined in the specification so as to know what compounds are included and/or excluded by the term. Applicants have deleted this term from claim 1 as suggested by the Examiner. Therefore, the rejection should be withdrawn.

Claims 9 and 10 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. Applicants have cancelled claim 9, rendering the rejection with respect to claim 9 moot. Claim 10 is directed to a method of treating asthma or rhinitis comprising administering to a patient a therapeutically effective amount of a compound of formula (I), or a pharmaceutically acceptable salt thereof. In rejecting claims 9 and 10, the examiner characterized the nature of the invention as a method of treating a disorder mediated by prostaglandin D2. Pending claim 10 is more narrow than claim 9, which was directed to a method of treating a disorder mediated by prostaglandin D2.

Claim 10 is limited to the treatment of specific respiratory diseases of asthma or rhinitis. Applicants have discovered that certain indole acetic acid derivatives (e.g., the compounds of formula (I)) were active at the CRTh2 receptor, and as a consequence are expected to be potentially useful for the treatment of various respiratory diseases, including asthma and COPD. (See specification page 1, second paragraph.) Applicants submit that the more narrow claim 10 satisfies the requirements of 35 U.S.C. 112, first paragraph, and request that the rejection as it was applied to claim 10 be withdrawn.

Claim 14 was rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The Examiner asserts that the term "protected derivatives" of the compounds of formula (II) or (III) are not defined in the specification so as to know the structures of the compounds that are included and/or excluded by the term. (See Office Action, page 9 (3).) Applicants submit that protecting groups are routinely used in synthetic chemistry and therefore the term "protected derivatives" would be clear to one skilled in the art so as to

understand the structures of the compounds that are included and/or excluded by the term. Applicants refer to page 9 of the specification, where protecting groups are discussed and referred to as being fully described in two references.

It will be appreciated by those skilled in the art that in the processes of the present invention certain functional groups in the starting reagents or intermediate compound may need to be protected by protecting groups. Thus, the preparation of the compound of formula (I) may involve, at an appropriate stage, the removal of one or more protecting groups. The protection and deprotection of functional groups is fully described in 'Protective Groups in Organic Chemistry', edited by J. W. F. McOmie, Plenum Press (1973), and 'Protective Groups in Organic Synthesis', 3rd edition, T. W. Greene & P. G. M. Wuts, Wiley-Interscience (1999). (Specification page 9, lines 9-16.)

In view of the foregoing, Applicants submit that the specification contains adequate support for the term "protected derivatives" and request that the rejection be withdrawn.

Claim 4 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite and unclear. The Examiner asserted that it was unclear which variables can have the substituents as mentioned in claim 1. Applicants have amended claim 4 to recite that the R<sup>1</sup> substituent(s) is/are in the 4- and/or 5- position. Applicants submit that amended claim 4 is sufficiently definite and request that the rejection be withdrawn.

Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention and for being unclear because of the phrase "comprises reaction of a compound of formula (II)." Applicants have deleted this phrase from claim 4 and therefore request that the rejection be withdrawn.

Claim 14 was further rejected under 35 U.S.C. 112, second paragraph, as being indefinite because the term "protected derivatives" allegedly was not defined so as to know the metes and bounds of the claim. Applicants submit that the term "protected derivatives" is sufficiently definite so as to make clear the metes and bounds of the claim for at least the reasons described above. Applicants therefore request that this rejection be withdrawn.

Claim 11 was rejected under 35 U.S.C. 101 for being directed to non-statutory subject matter. Claim 11 is cancelled herewith, rendering this rejection moot.

The specification was objected to because of an informality of a hydrogen atom missing on the carboxylic acid in Examples 12, 17, 18, 20-23, and 25-29. Applicants amended the specification to correct the informality objected to by the examiner, inserting the hydrogen atom missing on the carboxylic acid in Examples 12, 17, 18, 20-23, and 25-29. Applicants therefore request that the objection be withdrawn.

Claims 1-7, 9-11, and 14 were objected to due to the misspelling of the term heteroaryl in claim 1 and the repetition of the phrase of a compound in claim 11. The term heteroaryl has been deleted from claim 1, and claim 11 has been cancelled. Therefore, Applicants request that the corresponding objections be withdrawn.

The petition fee in the amount of \$1020 is being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply all charges or credits to Deposit Account No. 06-1050, referencing Attorney Docket No. 06275-435US1.

Respectfully submitted,

Date: July 9, 2007

/Catherine M. McCarty, Reg. No. 54,301/

Janis K. Fraser, Ph.D., J.D.  
Reg. No. 34,819

Fish & Richardson P.C.  
225 Franklin Street  
Boston, MA 02110  
Telephone: (617) 542-5070  
Facsimile: (617) 542-8906

reply 435us1